

HOUSE BILL 2138

By West

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14, relative to explosives.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Part 14, is amended by adding the Sections 2 through 14 as a new part thereto:

SECTION 2. As used in this chapter, unless the context otherwise requires:

(1) "Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, explosive gas or expanding gas which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts, either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled. "Destructive device" does not include fireworks as defined in Title 68, Chapter 104, nor use of explosives in lawful blasting operations as defined in Title 68, Chapter 105;

(2) "Explosive material" means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such

proportions, quantities or packaging that an ignition by fire, by friction, by concussion, by percussion, by detonator or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, powders for blasting, high or low explosives, blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit breakers, detonators, blasting caps and other detonating agents and black or smokeless powders not manufactured or used for lawful sporting purposes or fireworks defined in Title 68, Chapter 104. Also included are all explosive materials to be determined and listed annually by the office of the state fire marshal;

(3) "Hoax bomb" means any device or object that by its design, construction, content or characteristics appears to be, or is represented to be or to contain a destructive device, explosive material or incendiary device as defined in this section, but is, in fact, an inoperative facsimile or imitation of such a destructive device, explosive material or incendiary device;

(4) "Incendiary device" means a container containing gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material, having a wick or other substance or device which, if set or ignited, is capable of igniting such gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material, provided, that no similar device commercially manufactured and used solely for the purpose of illumination shall be deemed to be an incendiary device;

(5) "Legal authority" means that right as expressly stated by law;

(6) "Person" shall mean an individual, corporation, company, association, firm, partnership, society or joint stock company; and

(7) "Storage magazine" is defined to mean any building or structure, other than an explosives manufacturing building, approved by the state fire marshal for the storage of explosive materials.

SECTION 3. It is the intent of the general assembly in enacting this part that all criminal offenses and penalties defined in this part shall be cumulative and shall be in addition to any other offenses and penalties provided for by law. The general assembly contemplates and authorizes separate and consecutive sentences for the offenses defined in this part and other offenses provided for or defined by law. The general assembly declares as a matter of law that for the offenses defined in this part that involve injuries or death to persons those offenses are separate offenses as to each person whose injury or death results from the conduct prescribed by this part.

SECTION 4. Any person who possesses or manufactures any explosive material without first obtaining a permit to use explosives from the office of the state fire marshal or who possesses or manufactures any destructive device or incendiary device shall be guilty of a Class C felony.

SECTION 5. Any person who knowingly sells, barter or trades in any explosives to be used in connection with acts prohibited by this part shall be guilty of a Class A misdemeanor.

SECTION 6. Any person who unlawfully and intentionally damages the property of another or attempts to damage the property of another by the use of a destructive device, explosive material or incendiary device shall be guilty of a Class B felony.

SECTION 7. A violation of this part which causes bodily injury or death to any person shall be punishable as a Class A felony.

SECTION 8. A violation of this part which causes death, serious injury or debilitating bodily injury to an explosive detection animal owned or used by a law-enforcement agency, shall be punishable as a Class B felony.

SECTION 9. (a) Any person who knowingly manufactures, purchases, sells, advertises for sale, transports, or possesses a hoax bomb with intent to violate any provision of this part shall be guilty of a Class A misdemeanor.

(b) Notwithstanding the provisions of subsection (a), any person who purchases or uses a hoax bomb to commit or attempt to commit any felony shall be guilty of a Class B felony.

SECTION 10. Any person who breaks and enters or enters without breaking any storage magazine, shop, office, storehouse, warehouse or any other building or outhouse adjoining thereto, any railcar, boat, vessel or motor vehicle where explosive material is stored, with the intent to commit theft of such explosive material shall be guilty of a Class B felony.

SECTION 11. Any person who receives, conceals, transports, ships, stores, barter, sells or disposes of any explosive material knowing or having reason to know that such materials are stolen is guilty of a Class B felony.

SECTION 12. Any person who wantonly performs any act with a destructive device, explosive material or incendiary device which creates substantial risk of death or serious bodily injury to another shall be guilty of a Class B felony.

SECTION 13. (a) Unless specifically prohibited by law, nothing in this part shall prohibit the authorized manufacture, sale, transportation, distribution, use or possession of any explosive material by any person holding a permit for such issued by the office of the state fire marshal. Any person performing a lawful activity pursuant to or regulated by the terms of a permit issued by the department of commerce and insurance shall be exempt from the provisions of this part.

(b) Unless specifically prohibited by law, nothing in this section shall prohibit the authorized manufacture, transportation, distribution, use or possession of any explosive, destructive device or incendiary device by a member of the armed forces or law-enforcement officers whenever such persons are acting lawfully and in the line of duty; nor shall it prohibit the manufacture, transportation, distribution, use or possession of any explosive material, destructive device or incendiary device to be used solely for lawful scientific research or lawful educational purposes. Any person engaged in otherwise lawful blasting activities who fails to

obtain a permit or who is in possession of an expired permit issued by the office of the state fire marshal shall not be construed to be in violation of this part.

SECTION 14. Any destructive device, explosive material, incendiary device or hoax bomb possessed, involved in, used or intended to be used in a violation of this part or any criminal law of this state is hereby declared to be contraband and any property interest therein shall be vested in the state of Tennessee. Such contraband may be seized by the office of the state fire marshal or other law-enforcement agency conducting an investigation, and upon application to the circuit court of the county in which such contraband is seized, be forfeited to the state of Tennessee for destruction or for training purposes by the office of the state fire marshal or other law enforcement agency.

SECTION 15. This act shall take effect July 1, 2000, the public welfare requiring it.